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PHILIP M. HALPERN,  
United States District Judge  
c/o Pro Se Office  
Room 200  
40 Foley Square  
Southern District of New York  
New York, New York 10007

Re: 19-CV-04642 (PMH) United States District Court

Your Honor Judge Halpern:

This communication is made in response to your letter dated April 19, 2021,

denying my Motion to Supplement my Supplemental Complaint.

2021. As a result, I find it necessary to refile my Supplemental Complaint.

Court's Individual Practices Rule 2(C).

The pertinent facts are as follows:

1. I timely filed my original complaint and Amended Complaint on February 11, 2021.

2. Defendant's Answer to my Complaints was not filed until February 19, 2021, just

over one year later and less than two (2) months ago.

3. In the six weeks since receiving Defendant's Answer I have recognized various issues that should be clarified for the Court and addressed directly in a Reply to Defendant's Answer. My Supplement was an attempt to accomplish both tasks in a single pleading for judicial economy and clarity for the Court.

4. Since the Court wishes to require another Amended Complaint on my part, I will accede to the Court's wishes and file separate documents that were parts of the

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The Court construes Plaintiff's request for a pre-motion conference in advance of his motion to amend the Second Amended Complaint as his motion to amend and denies same based upon consideration of Plaintiff's request (Doc. 92), the proposed Third Amended Complaint (Doc. 99), and Defendant's opposition (Doc. 107). See *In re Best Payphones, Inc.*, 450 F. App'x 8, 15 (2d Cir. 2011) (upholding construction of pre-motion letter as motion).

In sum, Plaintiff seeks leave to amend his pleading in order to provide additional evidence in support of his position and to "clarify" his claims. Under Federal Rule of Civil Procedure 15(a)(2), "[t]he court should freely give leave [to amend a pleading] when justice so requires." Upon due consideration of the circumstances herein, justice does not require granting Plaintiff leave to file a Third Amended Complaint. The Second Amended Complaint remains the operative pleading in this action.

To the extent that Plaintiff wishes to support the claims for relief that survived Defendant's motion to dismiss with additional evidence, he will have the opportunity to provide that evidence on a motion for summary judgment or at trial.

The Clerk of the Court is respectfully directed to terminate the motion sequence pending at Doc. 107.

SO ORDERED.



Philip M. Halpern  
United States District Judge

Dated: White Plains, New York  
April 26, 2021

Daly to Halpern

Page 2

rejected pleading: an Amended Complaint which I have entitled Third Amended Complaint for clarity going forward, and a Reply to Defendant's Answer to my previously filed complaints.

5. In the year since my Second Amended Complaint was filed, I have been able to locate pertinent information on salaries paid to Defendant's employees during the period I was employed by Defendant and thereafter that substantiate the allegations that Defendant was facing potential lawsuits based on gender pay discrimination; evaluate Defendant's Affirmative Defenses included in Defendant's Answer recently received that bear on various parts of my complaints, current allegations and applicable previous observations; and obtain appropriate supporting and evidentiary materials that should be exhibits to my Complaint.

6. Further, I feel it is necessary to clarify the statutory foundations of my lawsuit within my Complaint to assure all participants understand the significant differences between the Americans with Disabilities Act of 1999 and the successive Amendments Act of 2008 and the Congressional spirit and intent of both laws and their application to the facts of my case.

7. Finally, evidence from the Social Security Administration received in February 2020, and other evidence received from other individuals and entities after the filing of the instant litigation should be included in the filing of my Complaint.

8. In submitting the Supplement, I attempted to clarify my stated claims, provide a detailed factual recounting of the actions and events that resulted in this action, and present currently available existing, pre-discovery credible, admissible evidence to

Daly to Halpern

Page 3

focus all participants' attentions to the completion of the litigation and simplify the requirements for bringing the litigation to final judgment in this Court.

9. My goals will remain the same if the Court grants my Motion for Leave to File an Amended Complaint, a copy of which is attached to this letter.

10. I will be happy to provide any additional information requested by the Court to support this request.

Sincerely yours,

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Dante E. Daly

CC via ECF:  
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